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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8920 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NATWARBHAI ISHWARBHAI PATEL

Versus

DEPUTY DIRECTOR (SECONDARY)

Appearance:

1. Special Civil Application No. 8920 of 1999

MR RR VAKIL for Petitioner No. 1

MS NANDINI JOSHI, AGP, for Respondent No. 1-3

NOTICE SERVED BY DS for Respondent No. 1-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/08/2001

ORAL JUDGEMENT

Rule. Ms. Nandini Joshi, learned AGP, waives service of Rule for respondents.

2. What is challenged in this petition under Article

226 of the Constitution is the order dated 23-8-1999 (Annexure E) passed by the Deputy Commissioner of Education (Secondary), Gujarat State, rejecting the petitioner's application for opening an additional division (second division) in Std. 9.

3. The petitioner running Pratibha Vidhyalaya was granted permission to establish a secondary school in the year 1985 by opening one division of Std. 8. Since the secondary school has Stds. 8, 9 and 10, obviously permission to open one division of Std. 9 and one division of Std. 10 was also granted in subsequent years. Thereafter w.e.f. 1988, the school was permitted to open second division of Std. 8. The petitioner-institution has been applying before the authorities for permission to open one more division (i.e. second division) of Std. 9 from 1992 onwards. The permission has been refused for the last about 7 to 8 years on the ground that the school does not have adequate number of students in Std. 9 so as to justify the opening of second division in Std. 9 and also on the ground that granting the petitioner permission to open a second division of Std. 9 would adversely affect other nearby schools. The impugned communication dated 23-8-1999 specifically states that with respect to the application for opening second division of Std. 9 w.e.f. June, 1999, as against 122 enrolled students on inspection only 93 students were present and at the time of second inspection as against 122 enrolled students only 86 students were present.

4. Ms. Nandini Joshi, learned AGP, appearing for the respondents submitted that in view of the Government Resolution dated 30-5-2000, secondary school is permitted to have maximum 60 students in one division but if the classrooms in the school have adequate space and facilities, the competent authority such as District Education Officer can grant permission to admit not more than five students over and above 60 students. It is further stated that the Secretary, Education Department can in special circumstances grant permission to admit more students over and above 65 students if the school is registered with the prior approval of the Secondary Education Board.

It is further submitted by the learned AGP that the number of students found present at the time of personal inspection in the last three years was as under:

Sr. No.	Year	Regis- tered no. of Std. 8 student in 8th	Presence on visit	Registered no. of students in 9th	Presence on visit
8.	99-00	121	(not mentioned)	119	93
9.	00-01	129	81	110	73
10.	9/7/01	107	79	100	75

It is submitted by the learned AGP that since there were only 73 or 75 students in Std. 9 at the time of personal inspection, the school can accommodate all of them in the existing one division of Std.9 instead of opening the second division of Std. 9 which would cast additional financial burden on the State Government. The petitioner-school receives grant-in-aid and, therefore, permission to open the second division of Std. 9 would mean additional financial burden on the State Government.

5. On the other hand, Mr. Vakil, learned counsel for the petitioner has submitted that even if the classroom can accommodate 100 students it does not mean that the Government should not grant permission for opening the second division. It is submitted that physical space cannot be the only parameter for determining the number of students to be accommodated in one division. It is submitted that the teacher-student ratio must be such that the teacher is in a position to give personal attention to each student which would not be possible if there are more than 50 students in one division though optimum number would be not more than 40. It is further submitted that there will not be any additional financial burden on the State exchequer as there are a large number of surplus teachers who are being paid idle salary by the Government and, therefore if any such surplus teacher is made available to the petitioner-school the petitioner school is ready and willing to absorb such surplus teacher/s.

6. Having heard the learned counsel for the parties, it appears to the Court that there is considerable substance in the submissions being made on behalf of the petitioner-institution. Admittedly the school has been permitted to have two divisions of Std. 8. The number of enrolled students in Std. 8 (both divisions taken together) is more than 100. The number of students found

present at the time of personal inspection in the year 2000-2001 and 2001-2002 was 81 and 79 respectively. Similarly, at the time of personal inspection as against enrolled number of students in Std.9 being 119, 110 and 100 in the last three academic years (i.e. 1999-2000, 2000-2001 and 2001-2002), the students physically present were found to be 93, 73 and 75. The above figures indicate that in view of such a large number of students being crowded in one division, the number of enrolled students has been going down. Moreover, in view of the admitted position that the number of students physically found present at the time of inspection was more than 70 i.e. 73 and 75 on two occasions, there is justification in the petitioner-school's request for permission to open the second division of Std. 9.

7. As regards the Government Resolution dated 30-5-2000, the Resolution merely empowers the competent authority to grant permission to the school management to admit more than 50 students in one division. But for such powers, even the competent authority would be without any authority in granting permission to the school management to admit more than 50 students in one division. Conferring this power on the District Education Officer or other Officers of the State government does not mean that the State Government is denuded of its power to grant permission for opening additional division/s as and when facts and circumstances of the case require or justify. Taking judicial notice of the fact that students in a secondary school cannot be given adequate personal attention if there are more than 50 students in one division and considering the fact that admittedly there are more than 70 students in one division of Std. 9 and that when the school is already having two divisions of Std.8 since 1988, the impugned communication dated 23-8-1999 (Annexure E) does appear to be arbitrary and vitiated by non-consideration of all the relevant factors which ought to have been taken into account by the respondents while considering the petitioner's application. It is not the case of the respondents that the petitioner school does not have adequate number of rooms and facilities for opening a second division of Std. 9.

8. The main ground which has weighed with the authorities in rejecting the petitioner's application appears to be the possibility of additional financial burden if the second division is permitted to be opened for Std. 9 and also one additional ground that nearby schools would be adversely affected. The issue of need for second division has already been discussed above.

Moreover, there will be no additional financial burden of salary, since the petitioner-school is ready and willing to absorb surplus teacher/s who are otherwise getting idle salary from the Government. As regards the possibility of nearby schools being adversely affected, the said apprehension also appears to be misplaced as the petitioner-school does have 100 students enrolled for Std 9. In order to obviate any possibility of the nearby schools being adversely affected, the respondents can certainly fix the maximum number of students who can be admitted in two divisions of Std. 9 including one existing division and one additional division for which the petitioner school has applied.

9. In view of the above discussion, this petition is allowed. The impugned communication dated 23-8-1999 (Annexure E) is quashed and set aside. If the petitioner makes an application for permission to open an additional division i.e. second division in Std.9 over and above the existing one division in Std.9 along with the undertaking to absorb surplus teacher/s in the subjects to be specified by the school management, the respondents shall consider the same in light of the findings given in this judgment and if such an application is made within ten days from today, the same shall be considered and decided within three weeks.

10. Although there was justification on the part of the petitioner-institution in applying for second division of Std. 9 in the previous years, but since that period has already gone, the Court does not propose to grant any declaration for the previous years beyond quashing the communication dated 23-8-1999 (Annexure B). However, it is directed that petitioner's application for permission to open a second division of Std. 9 w.e.f. June, 2001 shall be considered in light of the findings given in paras 6, 7 and 8 of this judgment.

11. It is further clarified that while making an application for additional division of Std. 9 w.e.f. June, 2001, the petitioner school management shall give an undertaking that it will absorb the surplus teacher/s whose services shall be made available to it by the Government authorities immediately after granting the permission for opening second division in Std. 9. In the absence of any such undertaking the petitioner's application shall be liable to be rejected.

Rule is made absolute accordingly with no order as to costs.

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